

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-285-D

PETITION OF THE NORWOOD SCHOOL

OPINION OF THE BOARD

(Hearing held September 12, 2001)

(Effective Date of Opinion: October 30, 2001)

BACKGROUND

Case No. S-285-D is a petition for a special exception modification pursuant to §59-G-2.19 (Private Educational Institution) of the Zoning Ordinance to permit a 2,700 square foot addition to the existing Performing Arts building.

Pursuant to §59-A-4.11 of the Zoning Ordinance, the Board of Appeals held a public hearing on September 12, 2001 on the above-captioned case.

Yum Yu Cheng and Todd D. Brown of Linowes and Blocher LLP appeared on behalf of the Norwood School (the "Petitioner"). Five witnesses were called in support of the petition: (1) Richard Ewing, Headmaster of the Norwood School; (2) Stephen Parker, an architect; (3) David O'Bryan, a civil engineer; (4) Craig Hedberg, a transportation planner; and (5) Phil Perrine, a land planner.

Decision of the Board: Special exception modification **GRANTED**, subject to the Conditions enumerated below.

EVIDENCE PRESENTED

1. At the request of the Petitioner, the Board incorporated the record of the previous Special Exception cases for S-285 into this proceeding.
2. Richard Ewing, who has been the Headmaster of the Norwood School (the "School") for nineteen years, testified that the proposed modification will involve a 2,700 square foot addition to the existing Performing Arts Building. He explained that the proposed addition is necessary to accommodate the lower school's existing performing arts program and that the decision to expand the Performing Arts Building was made after meeting with consultants. He indicated that the authorized number of students and staff (560 students and 120 staff) and the operation of the School would not change as a result of the proposed addition. Mr. Ewing said that the

School provided plans of the proposed modification to adjacent property owners who made no objections to the change. He stated that the Planning Board's recommended conditions are acceptable to the Petitioner and that it is the Petitioner's intention to construct and operate the improvements in accordance with the plans and specifications submitted to the Board of Appeals.

3. Stephen Parker, a registered architect in Maryland specializing in school design, described the site, screening, floor plans of the proposed addition, the features of the Performing Arts Building including associated lighting, elevations, and maintenance and construction activities.

Description of Site

Mr. Parker testified that the subject property (the "Property") is located at 8821 River Road in Potomac, Maryland. The Property is in the RE-2 Zone and is comprised of approximately 38.06 acres. The primary access point into the site is from a signalized entrance along River Road. There are two other entrances into the site: (1) a secondary access point on River Road, located approximately 300 feet south of the intersection with Bradley Boulevard; and (2) an access point on Bradley Boulevard at the rear of the Property. The Performing Arts Building is located on a hill approximately 245 feet from Bradley Boulevard and 245 feet from the adjoining property to the east. From Bradley Boulevard, one can only see the roofline of the building. The rest of the building is screened by existing forest and trees. [Exhibit #24: Site Plan and Exhibit #28: Site Plan of Forest / Tree Lines].

Floor Plans

Mr. Parker testified that the area of the existing Performing Arts building is approximately 7,330 square feet. The existing lower floor consists of a theater space, storage and practice rooms, a mechanical area, and bathrooms. The existing upper floor consists of an art room, a small office and two breakout classrooms, tutoring space, and a studio. The School proposes to add 2,700 square feet to the north end of the building by removing the bay window on the lower floor and the balcony on the upper floor. On the lower floor, an office will be added and the existing stage area will be expanded for lower school performances. The upper floor will be enlarged, allowing for the addition of breakout classrooms and reconfiguration of the art studio space to support the current arts curriculum. [Exhibit #25: Floor Plans].

Features of the Performing Arts Building

Mr. Parker testified that the materials used for the proposed addition will be consistent with the materials of the existing building, which will continue to be compatible with the environment and character of the surrounding neighborhood. Exhibit #27 shows the elevations of the proposed addition. The North Elevation shows the window designs for the proposed addition. In addition, two lights will be located on the exterior of each floor (lower and upper floors) for visibility and security purposes. Existing lights located at the front of the

Performing Arts building may be replaced to match the ones located in the back exterior. Adjoining property owners will not be able to see the source of the lights. Accordingly, the proposed addition and lighting will cause no adverse or detrimental impact to adjacent or nearby properties or to the welfare of residents, visitors or workers in the area. The proposed addition will be in harmony with the general character of the surrounding neighborhood and will not change the present character or future development of the surrounding residential community. [Exhibit #26: Photographs of the Performing Arts Building and Exhibit #27: Elevations].

Maintenance and Construction Activities

Mr. Parker testified that the School will perform the following maintenance work on the Performing Arts building: (1) replace the existing windows and doors; (2) repair the existing roof; (3) repair the exterior surfaces of the building; and (4) renovate the interior of the building. The maintenance activities and construction of the new addition to the Performing Arts building will be done simultaneously. Although the maintenance will only take a couple of months, the entire project will take approximately one year.

4. David O'Bryan, a registered civil engineer in Maryland, reviewed the site plan and how it comports with the requirements of the Zoning Ordinance using the chart on the Site Plan (Exhibit #24) and as shown below.

	Required	Provided
Min. Net Lot Area	87,120 sf	1,657,900 sf
Parking Spaces	120	185
Lot Width at Front Bldg Line	150'	1,000'
Lot Width at Street Line	25'	950'
Bldg. Setback from Street	50'	245'
Setbacks from Adjoining Lots	17'	245'
One Side -	35'	245'
Rear -		
Max. Building Height	50'	23'
Coverage	25% or 414,475 sf	3.6% or 60,000 sf

Mr. O'Bryan corrected the building height shown on the Site Plan that was previously submitted (Exhibit # 4). Exhibit # 4 had the building height at 42 feet. The correct height of the proposed addition is 23 feet.

Mr. O'Bryan also testified that no change to the existing landscaping was proposed in connection with the modification because the existing landscaping was adequate to screen the proposed addition. He also testified that the proposed addition would not overburden existing public services and facilities and submitted into the record a letter from the Montgomery County Department of Permitting Services (with a stormwater management plan attached) which exempts the proposed development from stormwater management concept review and controls due to the limited disturbed area (Exhibit #29). Accordingly, the proposed addition will cause no adverse or detrimental impact to adjacent or nearby properties or to the welfare of residents, visitors or workers in the area. The proposed addition will be suitable for this site and compatible with the surrounding neighborhood.

5. Craig Hedberg, a transportation planner, testified that there would be no increase in the number of peak hour trips because no increase in the previously authorized number of students/faculty was proposed and there would be no change in the operating characteristics of the School. In his opinion, the proposed special exception modification would be adequately served by the nearby roads and would have no detrimental effect on vehicular or pedestrian traffic or safety.
6. Phil Perrine, a land planner, reviewed his analysis and explained that the proposed addition conformed with the 1980 Potomac Subregion Master Plan, which recommends the RE-2 Zone for this Property. The Zoning Ordinance permits private educational institutions by special exception in the RE-2 Zone, and the special exception development standards are satisfied for the proposed addition as described by the previous expert witnesses. Mr. Perrine indicated that the County need requirement set forth in Section 59-G-1.25 was previously satisfied in S-285-C and referred to the finding in that case. He defined the general neighborhood as shown on the General Neighborhood Map (Exhibit #30) and described the surrounding properties to be developed with low-density residential uses. Mr. Perrine concluded that the proposed addition will cause no adverse or detrimental impact to adjacent or nearby properties or to the welfare of residents, visitors or workers in the area. The proposed addition will be in harmony with the general character of the surrounding neighborhood and will not change the present character or future development of the surrounding residential community.
7. The Board of Appeals agrees with and adopts as its findings of fact the testimony presented by the witnesses as described above and further adopts and incorporates by reference the findings of fact contained in the Planning Board Recommendations (Exhibit # 21) and Staff Report (Exhibit # 20) with the conditions set forth below.

FINDINGS OF THE BOARD

Special Exception General Standards

Based on the factual findings discussed above, the Board finds from a preponderance of the evidence of record that the proposed modification meets the general standards for granting special exceptions found in §59-G-1.2 as follows:

§59-G-1.2.1 Standard for Evaluation

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

The inherent physical and operational characteristics of the proposed use are the physical activities, noise, and traffic associated with a school. Due to the limited nature of the modification and the absence of any changes in operating characteristics for the School, the inherent physical and operational characteristics associated with this modification will have no adverse effects on nearby properties or the general neighborhood. The location, residential scale design and limited size of the proposed addition, the topography of the location, and the presence of a recorded conservation easement and additional existing forest adjacent to the proposed addition will ensure compatibility with the surrounding residential area and will mitigate any views from the nearby residences into the Property. There are no non-inherent adverse effects.

§ 59-G-1.21 General Conditions

A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

The Property is zoned RE-2 and private educational institutions are permitted by special exception in the RE-2 Zone under §59-C-1.31.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The proposed modification complies with the standards and requirements for a private educational institution under §59-G-2.19.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Property is covered by the 1980 Potomac Subregion Master Plan (the "Master Plan") which supports the existing RE-2 zone for the Property. The proposed modification is permitted by special exception in that zone.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

The proposed modification will be in harmony with the low-density residential character of the area because the design, scale, and bulk of the proposed addition is compatible with the general neighborhood. There will be no increase in the previously authorized number of students and staff as a result of the proposed modification. Accordingly, there will be no change in the intensity and character of activities on the Property including traffic and parking conditions.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The proposed building addition will not have any detrimental effects on the surrounding properties because it is set back 245 feet from the nearest property line and is well screened by existing forest.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The proposed addition will not cause any objectionable noise, odors, dust, illumination, glare or physical activity on or around the Property. The proposed lighting for the addition will be directed downwards and will not cast any glare or light spillover onto adjacent properties. Substantial setbacks and existing forest will assure any activity associated with the building addition will be well-contained within the Property boundary.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with recommendations of a master or sector plan do not alter the nature of an area*

Because the proposed addition will not modify the operations of the School or increase the authorized number of students or staff, it will not increase the number, intensity, and scope of existing and approved special exception uses sufficiently to adversely affect the area.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

As indicated by the witnesses, the proposed addition will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area of the Property, irrespective of any adverse effects the use might have if established elsewhere in the RE-2 Zone. The building addition is well designed and limited in size. The substantial building setbacks, topography of the site, and existing forested areas will assure no adverse effects.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

The Property will continue to be served by adequate public facilities.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

The proposed modification will not require approval of a preliminary plan of subdivision.

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

There is no increase in approved vehicular traffic volumes or internal traffic patterns associated with this proposed modification. Thus, the proposed modification will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Special Exception - Specific Standards

The Board further finds from a preponderance of the evidence of record that the proposed modification meets the applicable specific standards and requirements of §59-G-2.19 as follows:

§59-G-2.19: Private Educational Institutions

1. *Such use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity or any other element which is incompatible with the environment and character of the surrounding neighborhood.*

As indicated by the cumulative testimony of the witnesses and supplemented by the exhibits, this condition has been satisfied. Previously approved student enrollment and staff limitations will not be exceeded, and no operational changes are proposed.

2. *Except for buildings and additions thereto completed, or for which building permits have been obtained prior to the time of adoption of this section, such use will be housed in buildings architecturally compatible with other buildings in the surrounding neighborhood, and, in the event such building is to be located on a lot, tract or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, that the exterior architecture of such building will be of a residential home design, and at least comparable to existing residential homes, if any, in the immediate neighborhood.*

The proposed addition, located on 38 acres of land, will be architecturally compatible with the existing Performing Arts Building, which will continue to be compatible with the residential nature of the surrounding neighborhood.

3. *Such use will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community.*

The addition is well screened by existing forest and of limited size and will not change the character or future development of the surrounding residential community.

4. *Such use can and will be developed in conformity with the following area, density, building coverage, frontage, setback, access and screening requirements, where specified:*
 - a. *Area, frontage and setback—As shall be specified in a site plan of development approved by the board; provided, that in no event shall such standards be less than the area regulations for the zone in which the private educational institution is proposed to be located; and*
 - b. *Access building coverage and screening—As shall be specified in a site plan of development approved by the board; and*
 - c. *Density—Such density, being the allowable number of pupils per acre permitted to occupy the premises at any time as shall be specified by the board upon consideration of the following factors:*
 - 1) *Traffic patterns, including:*

- a) *Impact of increased traffic on residential streets;*
- b) *Existence of arterial highways; and*
- 2) *Noise or type of physical activity; and*
- 3) *Character, percentage and density of existing development and zoning within the community; and*
- 4) *Topography of the land to be used for the special exception:*
- 5) *Provided that a density in excess of 87 pupils per acre may only be permitted upon a finding that (a) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; and (b) the additional density will not adversely affect adjacent properties; (c) additional traffic generated by the additional density will not adversely affect the surrounding streets; and (d) adequate provisions for drop-off and pick-up of students will be provided.*

As indicated by the Site Plan (Exhibit #24) and the cumulative testimony of the witnesses, the proposed use will comply with all the standards of the Zoning Ordinance without requiring any waivers of those standards. No change in the previously authorized student density is proposed.

Section 59-G-1.25: County Need

For the public convenience and service, a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the County, and the use at the proposed location will not result in a multiplicity or saturation of similar uses in the same general neighborhood of the proposed use.

The County need requirement, which is not an issue in this case, was satisfied in the previous case, S-285-C.

Section 59-G-1.26: Exterior Appearance in Residential Zones

Structures to be constructed, reconstructed or altered pursuant to special exceptions in residential zones must, whenever practicable, have the exterior appearance of residential buildings of the type otherwise permitted and must have suitable landscaping, screen planting and fencing wherever deemed necessary by the board, the hearing examiner or the district council.

The architectural features of the proposed addition will support the School's existing curriculum and enhance the appearance of the School. As designed, the building addition will

be compatible with the surrounding residential neighborhood. Existing landscaping and forest conservation areas are sufficient to screen the proposed addition.

Conditions

Based upon the foregoing, the Board approves the Special Exception Modification for a Private Educational Institution, subject to the following conditions:

1. The Petitioner is bound by all submitted statements and plans.
2. All previous conditions of the Special Exception remain in full force and effect.

On a motion by Allison I. Fultz, seconded by Louise L. Mayer, with Donald H. Spence, Jr., Chairman, Angelo M. Caputo, and Donna L. Barron in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the resolution required by law as its decision on the above-entitled cases.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 30th day of October, 2001.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedures.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the Zoning Ordinance). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.

